IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.1481 OF 2005

M/s. Leela Associates & Anr. ..Petitioners.

Versus

Municipal Corpn. Of Gr. Mumbai
& Anr. ..Respondents.

Mr. Rajiv Narulla i/b. M/s. Jhangiani Narula & Associates for the Petitioners.

Ms. Priti Purandare for the Respondents.

CORAM: DALVEER BHANDARI, C.J. &
S.J. VAZIFDAR, J.
DATE : 7TH JULY, 2005

P.C.

1. Petitioner No. 2 is a partner of Petitioner No. 1. Petitioner No. 1 is a firm of builders. Respondents Nos. 2 and 3 are the Executive Engineer and the Assistant Municipal Commissioner , respectively , of Respondents No. 1.

2. The Petitioners have challenged the Respondents action of demolishing a building erected by them. The Petitioners have also

sought a Writ of Mandamus calling upon the Respondents to consider their application for regularisation of the said construction.

3. We are not inclined to exercise our jurisdiction under Article 226 of the Constitution of India in favour of the Petitioners who have at every stage violated the building rules, acted contrary to the permissions obtained and breached every direction given by the Respondents.

4. It is pertinent to note at the outset that Mr Narula, the learned counsel appearing on behalf of the Petitioners, did not even contend that the construction is not in violation of law. He did not contend that the construction was not without permission. His only contention was that before demolishing the construction the Respondents are bound to consider Petitioners' application for regularising this work , though it was admittedly illegal.

5. Firstly , we are not inclined to interfere with the demolition, carried out by the Respondents in view of the Petitioners having at every stage blatantly defied the directions and orders lawfully passed by the Respondents from time to time. Secondly , the demolition had already commenced and is completed to the extent of 70%. Thirdly ,

as a matter of fact , the Petitioners were afforded an opportunity of having the work regularised , pursuant to their application in that behalf on earlier occasions but did not avail of the same. Instead of abiding by the conditions necessary to have the illegal work regularised the Petitioners continued with and sought to complete the illegal work. The application for regularisation referred to by Mr Narula , dated 13th February 2003 was not the first such application.

6 (a). The first IOD was issued by the Respondents on 2nd December 1981 four ground plus for upper floors. The commencement certificate, upto the plinth was issued on 8th February 1983. The Petitioners however, did not carry out the work within the validity period of one year. However, thereafter, they proceeded with the work without a valid commencement certificate as per their proposed amended plans. The Respondents therefore issued a stop work notice under section 354 (A) of the Mumbai Municipal Corporation Act on 21st August 1996.

(b). The Petitioners thereafter applied for a fresh commencement certificate, along with the amended plans for a part ground (basement in front), plus part stilt, plus six upper floors. The

Respondent issued an IOD for the same on 29th January 1997. It is important to note, however, that the commencement certificate, issued on 9th April 1997, was only for work upto the plinth level including basement in front and stilts. Prima - facie it appears that despite the same the Petitioners carried on work up to the sixth floor. The commencement certificate for the work up to the sixth floor was issued only on 7th May 1997.

(c). Pursuant to the Petitioners application for additional seventh and eighth floors the Respondents issued a demand note on 18th December 1997 for utilising the balance plot potential by making payments for scrutiny fees, development charges and certain other costs. The Petitioners, however, failed to make such payments within the stipulated time. Thus, as per the terms of the demand note the proposal stood revoked. Despite the same, and without any permission in that behalf the Petitioners carried on construction upto the 13th floor. There was no justification whatsoever for the Petitioners to have done so. Mr. Narula was unable to furnish any justification for the same either. The entire construction , therefore , was ex-facie illegal.

7. The Respondents therefore justifiably issued a stop work notice under section 354 (A) of the MMC Act. The Petitioners chose to ignore this notice altogether, and continued with the work. The Respondents therefore served a notice dated the 10th of December 2002 under section 53 (1) of the Maharashtra Regional and Town Planning Act. In addition thereto, the Respondents also served notices upon the developer, and that the structural engineer, calling upon them for an explanation for allowing the work to commence beyond what was approved in the commencement certificate. Quite obviously, there was no explanation for the same.

8. In view of Mr Narula's submission regarding the Respondents being bound to give the Petitioners an opportunity of having the work regularised, it is important to note that on 14th January 2003 (wrongly referred to in the affidavit in reply as 16th January 2003) the Petitioners submitted a letter stating that they would submit the requisite TDR within one month to enable them to regularise the work. The Petitioners however failed to do so. It is important to note that this letter was in response to the said notice dated 10th December 2002 issued under section 53 (1) of the MR &

TP Act with a view to regularise the illegal construction. By the said letter the Respondents also expressly stated that the Petitioners had not shown any indication to get the work regularised and once again directed them to comply with all the requirements regarding submitting the requisite quantity of TDR for regularising the work carried out beyond the commencement certificate. Finally , the Petitioners were put on notice that their failure to do so would compel action for removal of work carried out beyond the commencement certificate and beyond the approved plans. The Petitioners however , admittedly failed to comply with the said requisitions either.

9. The Respondent therefore justifiably on 16th April 2003 commenced the demolition of the Petitioners construction and also filed a prosecution under section 53 (1) of the MR&TP Act against the Petitioners. By 24th March 2003 the external and internal walls were demolished by the Respondents as a result , whereof the building from the 7th to the 13th floors was not habitable. On 25th May 2005 the work of removal of the RCC structure was entrusted to a private contractor, as it required the use of certain machinery. By now over 70% of the demolition work has been completed.

10. We do not agree that the action of the Respondents to demolish the aforesaid, patently illegal construction, is faulty in any manner. The Respondents have granted sufficient time to the Petitioners to comply with all the legal formalities and the provisions of law. The Petitioners however failed to avail of the said opportunities and instead carried on with the illegal construction in violation of all rules and statutory provisions.

11. Mr. Narula challenged the demolition of the said construction by the Respondents, only on the ground that the Respondents had not decided the Petitioners application dated the 13th February 2003 for regularisation. As rightly stated in the affidavit in reply this application for regularisation was not the first one. As stated above , the Petitioners had sought, even earlier to regularise the work and pursuant thereto requested time to furnish the requisite TDR. Despite an opportunity having been given the Petitioners failed to do so. The Respondents are not precluded from carrying out their statutory obligation of demolishing illegal constructions merely because a party repeatedly makes applications for regularisation.

12. In the circumstances, the petition is dismissed. The

Petitioners shall pay the cost of this petition fixed at Rs 25,000 to Respondent No. 1 within four weeks from today.

CHIEF JUSTICE

S.J. VAZIFDAR, J.